

## Glosswood Pty Ltd - Terms & Conditions of Trade

### 1. Definitions

- 1.1 "Australian Consumer Law" means the Australian Consumer Law in Schedule 2 to the CCA .
- 1.2 "CCA" means the Competition and Consumer Act 2010.
- 1.3 "Company" means Thomson Brother Fabrication Pty Ltd TA Tudor Timber Company Pty Ltd (ACN 072 092 721) and any person acting on behalf of and with the authority of the Company
- 1.4 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.5 "Delivery" has the meaning given in clause 5.1.
- 1.6 "Goods" means all goods or services supplied by the Company to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other) .
- 1.7 "Price" means the Price payable for the Goods as agreed between the Company and the Customer in accordance with clause 4 below.

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted, and is immediately bound by, these terms and conditions if the Customer places an order for or accepts Delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the Company's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Company.

### 3. Change in Control

- 3.1 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership or control of the Customer and/or any other change in the Customer's details (including changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause .

### 4. Price and Payment

- 4.1 At the Company's sole discretion, the Price shall be either:
  - (a) as indicated on any invoice provided by the Company to the Customer; or
  - (b) the Price as at the date of Delivery of the Goods according to the Company's current price list; or
  - (c) the Company's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Company reserves the right to change the Price in the event of a variation to the Company's quotation . Any variation from the plan of scheduled Services or specifications (including in the event that the cost of overseas transactions increases as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges or as a result of increases to the Company in the cost of the Goods) will be detailed in writing and charged for on the basis of the Company's quotation and will be shown as variations on the invoice . Payment for all variations must be made in full at their time of completion.
- 4.3 At the Company's sole discretion, a non-refundable deposit may be required .
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be:
  - (a) on Delivery of the Goods;
  - (b) before Delivery of the Goods;
  - (c) thirty (30) days following the date of the invoice;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Company .
- 4.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method agreed between the Customer and the Company.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other agreement for the sale of the Goods . The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price . In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 5. Delivery of Goods

- 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
  - (a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Company's address; or
  - (b) the Company (or the Company's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 5.2 At the Company's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price .
- 5.3 The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Customer is unable to take Delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 The Company may Deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by the Company to the Customer is an estimate only. The Customer must still accept Delivery of the Goods even if late and the Company will not be liable for any loss or damage incurred by the Customer as a result of the Delivery being late.

### 6. Risk and Insurance

- 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries .

### 7. Natural variations in Goods

- 7.1 Timber is a natural product and as such colour, shade tone, markings, and veining may vary from samples provided .
- 7.2 The Customer acknowledges that Goods supplied may:
  - (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time;
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather;
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.
- 7.3 Before or when the Customer places an order for Goods, the Company may provide (including by making them available on the Company's

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website) the Customer with a product specification sheet (Specification) and/or technical product data sheet (Data Sheet) outlining technical details in relation to that type of Goods. The Customer acknowledges and agrees that technical details in Specifications and Data Sheets are indicative only, and relate only to Goods of such size and dimensions specified in the relevant Specification or Data Sheet and to the specific sample of Goods tested. Due to natural variations, the technical details of the particular Goods ordered by the Customer may differ from those outlined in the Specification and/or Data Sheet.

7.4 The Customer acknowledges and agrees that all information, Specifications, Data Sheets and samples provided by the Company in relation to the Goods are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods will not entitle the Customer to reject the Goods or to make any claim in respect of them.

### 8. Installation, use and purpose of Goods

8.1 The Company may provide installation guides with its products and also publishes information about the Goods on its website ([www.glosswood.com.au](http://www.glosswood.com.au)), including downloadable installation tips and guides in relation to the Goods and information in relation to the recommended use, purpose and application of the Goods (Guides).

8.2 Any Guides provided, installation tips provided by the Company are guides only and do not replace the services of professional builders, contractors and/or consultants. Any statements or representations in the Guides about the use, purpose or application of the Goods are of a general nature only and do not take into account individual circumstances. The Customer must comply with the relevant Guides when installing and using the Goods.

8.3 The Customer is solely responsible for the installation and use of the Goods. The Company will not be liable in relation to any installation or use of the Goods by the Customer or third party which does not comply with the relevant Guides or is otherwise not in accordance with industry practice or applicable industry standards (if any).

8.4 Apart from the Guides, the Company may from time to time provide the Customer with additional information in relation to the use, purpose or application of the Goods (Additional Information). Additional Information is based on the facts disclosed to the Company at the time the information is provided to the Customer. If any relevant facts have not been disclosed to the Company, or if circumstances change, the Additional Information may not be accurate. To the extent permitted by law, the Company will not be liable in relation to any use of the Goods by the Customer or third party which:

- (a) is not in accordance with the Additional Information; or
- (b) is in accordance with Additional Information provided by the Company at a time when the Company was not in possession of all relevant facts pertaining to the Customer's circumstances or where those circumstances have changed without the Company's knowledge .

### 9. Title

9.1 The Company and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid the Company all amounts owing to the Company; and
- (b) the Customer has met all of its other obligations to the Company.

9.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

9.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 9.1, the Customer is only a bailee of the Goods and must return the Goods to the Company on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand;
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs;
- (e) the Customer irrevocably authorises the Company to enter any premises where the Company believes the Goods are kept and recover possession of the Goods;
- (f) the Company may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Company; and
- (h) the Company may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 10. Personal Property Securities Act 2009 ("PPSA")

10.1 In this clause, financing statement, financing change statement, security agreement, and security interest have the meanings given to those terms by the PPSA.

10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Company to the Customer.

10.3 The Customer undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to:
  - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (ii) register any other document required to be registered by the PPSA; or
  - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Company;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Company; and
- (e) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

10.4 The Company and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

10.5 The Customer waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA .

10.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

10.7 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section

157 of the PPSA.

10.8 The Customer must unconditionally ratify any actions taken by the Company under clauses 10.3 to 10.5.

10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

#### 11. Security and Charge

11.1 In consideration of the Company agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including the payment of any money).

11.2 The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause .

11.3 The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including signing any document on the Customer's behalf .

#### 12. Defects and Returns

12.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify the Company in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote . The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Company to inspect the Goods.

12.2 If the Customer fails to advise the Company in writing of any matter referred to in clause 12.1 within seven (7) days of Delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's order. Nothing in this clause affects the Customer's rights for any failure to comply with a guarantee under the Australian Consumer Law .

12.3 Subject to this clause 12, returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 12.1; and
- (b) the Company has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

12.4 Notwithstanding clauses 12.1 to 12.7 but subject to the Australian Consumer Law, the Company shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) the Customer failing to properly maintain or store any Goods (including, in the case of furniture Goods, failing to maintain the Goods in accordance with the Care Instructions);
- (b) the Customer using the Goods for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Customer failing to follow any instructions or guidelines provided by the Company (including Guides, Installation Information and Care Instructions);
- (e) fair wear and tear, any accident, or act of God.

12.5 The Company may in its absolute discretion accept non-defective Goods for return in which case the Company may require the Customer to pay handling fees of up to thirty percent (30%) of the value of the returned Goods, with a minimum charge of one hundred and fifty (\$150.00) dollars whichever is the greater plus any freight costs.

12.6 The Customer acknowledges that the Company will not accept for return and/or credit unless the Goods are deemed to be defective in accordance with clause 12.3(b) or as required by law.

12.7 Notwithstanding anything contained in this clause, if the Company is required by a law to accept a return then the Company will only accept a return on the conditions imposed by that law.

12.8 The Company may (but is not obliged to) provide a warranty card to the Customer in relation to certain Goods. If the Company does provide a warranty card, the limited warranty provided under that warranty card is in addition to any other rights that the Customer may have under the Australian Consumer Law and other applicable law.

#### 13. Intellectual Property

13.1 In this clause, "Intellectual Property Rights" means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

13.2 Where the Company has designed, drawn or developed Goods for the Customer, then any Intellectual Property Rights in any designs and drawings and documents shall remain the property of the Company.

13.3 The Customer warrants that all designs, specifications or instructions given to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.

13.4 The Customer agrees that the Company may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Company has created for the Customer.

#### 14. Default and Consequences of Default

14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

14.2 If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees).

14.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the supply of Goods to the Customer or terminate these terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.

14.4 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer .

**15. Cancellation**

15.1 The Company may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any money paid by the Customer for the Goods. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation .

15.2 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Company as a direct result of the cancellation (including any loss of profits).

15.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

**16. Privacy Act 1988 ("Privacy Act")**

16.1 The Customer consents to the Company obtaining a credit report from a credit reporting agency containing personal credit information about the Customer to assist the Company to assess the Customer's application for commercial credit and the Customer's creditworthiness .

16.2 The Customer consents to the Company collecting and/or disclosing credit information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) where the customer has consented or as otherwise permitted by law - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers and notice in writing of the intention to disclose the credit information has been provided to the Customer; and/or
- (d) for the Company to assess the creditworthiness of the Customer.

The Customer understands that the credit information collected and/or disclosed can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act . This may be in addition to any personal information that the Company collects and/or discloses about the Customer, including (but not limited to) the Customer's name, address, phone numbers and email.

16.3 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit.

16.4 The Customer agrees that personal and credit information collected by the Company may be used, retained and disclosed by the Company for the following purposes (and for other purposes as shall be agreed between the Customer and Company or required by law from time to time):

- (a) the provision of Goods; and/or
- (b) the marketing of Goods by the Company, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods; and/or
- (f) contacting the Customer in order to respond to requests or queries.

16.5 The Company may disclose information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

16.6 The credit information given to the credit reporting agency may include:

- (a) personal information (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (b) details concerning the Customer's application for commercial credit and the amount requested;
- (c) advice that the Company is a current credit provider to the Customer;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of the Company, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
- (g) that credit provided to the Customer by the Company has been paid or otherwise discharged.